

Senate Bill 123

By: Senators Hawkins of the 49th, Murphy of the 27th, Hudgens of the 47th, Thomas of the 54th, Williams of the 19th and others

AS PASSED

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide for regulation and licensure of pharmacy benefits managers by the Commissioner of Insurance; to provide for definitions; to provide for license requirements and filing fees; to provide for requirements and procedures affecting pharmacy benefits managers; to require a surety bond; to provide that a pharmacy benefits manager shall not engage in the practice of medicine; to make certain audit requirements applicable to pharmacy benefits managers; to provide that a pharmacy benefits manager shall not have to be licensed as an administrator; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by adding a new chapter to read as follows:

"CHAPTER 64

33-64-1.

As used in this chapter, the term:

- (1) 'Business entity' means a corporation, association, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity.
- (2) 'Commissioner' means the Commissioner of Insurance.
- (3) 'Covered entity' means an employer, labor union, or other group of persons organized in this state that provides health coverage to covered individuals who are employed or reside in this state.

(4) 'Covered individual' means a member, participant, enrollee, contract holder, policy holder, or beneficiary of a covered entity who is provided health coverage by a covered entity.

(4.1) 'Health system' means a hospital or any other facility or entity owned, operated, or leased by a hospital and a long-term care home.

(5) 'Pharmacy benefits management' means the service provided to a health plan or covered entity, directly or through another entity, including the procurement of prescription drugs to be dispensed to patients, or the administration or management of prescription drug benefits, including but not limited to any of the following:

(A) Mail service pharmacy;

(B) Claims processing, retail network management, or payment of claims to pharmacies for dispensing prescription drugs;

(C) Clinical or other formulary or preferred drug list development or management;

(D) Negotiation or administration of rebates, discounts, payment differentials, or other incentives for the inclusion of particular prescription drugs in a particular category or to promote the purchase of particular prescription drugs;

(E) Patient compliance, therapeutic intervention, or generic substitution programs; and

(F) Disease management.

(6) 'Pharmacy benefits manager' means a person, business, or other entity that performs pharmacy benefits management for a health plan or covered entity. The term includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity. The term does not include services provided by pharmacies operating under a hospital pharmacy license. The term also does not include health systems while providing pharmacy services for their patients, employees, or beneficiaries, for indigent care, or for the provision of drugs for outpatient procedures.

33-64-2.

(a) No business entity shall act as or hold itself out to be a pharmacy benefits manager in this state, other than an applicant licensed in this state for the kinds of business for which it is acting as a pharmacy benefits manager, unless such business entity holds a license as a pharmacy benefits manager issued by the Commissioner. The license shall be renewed on an annual basis. Failure to hold such license shall subject the pharmacy benefits manager to the fines and other appropriate penalties as provided in Chapter 2 of this title.

- (b) An application for a pharmacy benefits manager's license or an application for renewal of such license shall be accompanied by a filing fee of \$500.00 for an initial license and \$400.00 for renewal.
- (c) A license shall be issued or renewed and shall not be suspended or revoked by the Commissioner unless the Commissioner finds that the applicant for or holder of the license:
- (1) Has intentionally misrepresented or concealed any material fact in the application for the license;
 - (2) Has obtained or attempted to obtain the license by misrepresentation, concealment, or other fraud;
 - (3) Has committed fraud; or
 - (4) Has failed to obtain for initial licensure or retain for annual renewal a net worth of at least \$200,000.00.
- (d) If the Commissioner moves to suspend, revoke, or nonrenew a license for a pharmacy benefits manager, the Commissioner shall provide notice of that action to the pharmacy benefits manager and the pharmacy benefits manager may invoke the right to an administrative hearing in accordance with Chapter 2 of this title.
- (e) No licensee whose license has been revoked as prescribed under this Code section shall be entitled to file another application for a license within five years from the effective date of the revocation or, if judicial review of such revocation is sought, within five years from the date of final court order or decree affirming the revocation. The application when filed may be refused by the Commissioner unless the applicant shows good cause why the revocation of its license shall not be deemed a bar to the issuance of a new license.
- (f) Appeal from any order or decision of the Commissioner made pursuant to this chapter shall be taken as provided in Chapter 2 of this title.
- (g)(1) The Commissioner shall have the authority to issue a probationary license to any applicant under this title.
- (2) A probationary license may be issued for a period of not less than three months and not longer than 12 months and shall be subject to immediate revocation for cause at any time without a hearing.
- (3) The Commissioner shall prescribe the terms of probation, may extend the probationary period, or refuse to grant a license at the end of any probationary period in accordance with rules and regulations.
- (h) A pharmacy benefits manager's license may not be sold or transferred to a nonaffiliated or otherwise unrelated party. A pharmacy benefits manager may not contract or subcontract any of its negotiated formulary services to any unlicensed nonaffiliated

business entity unless a special authorization is approved by the Commissioner prior to entering into a contracted or subcontracted arrangement.

(i) In addition to all other penalties provided for under this title, the Commissioner shall have the authority to assess a monetary penalty against any business entity acting as a pharmacy benefits manager without a license of up to \$1,000.00 for each transaction in violation of this chapter, unless the business entity knew or reasonably should have known it was in violation of this chapter, in which case the monetary penalty provided for in this subsection may be increased to an amount up to \$5,000.00 for each and every act in violation.

(j) A licensed pharmacy benefits manager shall not market or administer any insurance product not approved in Georgia or that is issued by a nonadmitted insurer or unauthorized multiple employer self-insured health plan.

(k) In addition to all other penalties provided for under this title, the Commissioner shall have the authority to place any pharmacy benefits manager on probation for a period of time not to exceed one year for each and every act in violation of this chapter and may subject such pharmacy benefits manager to a monetary penalty of up to \$1,000.00 for each and every act in violation of this chapter, unless the pharmacy benefits manager knew or reasonably should have known he or she was in violation of this chapter, in which case the monetary penalty provided for in this subsection may be increased to an amount up to \$5,000.00 for each and every act in violation.

(l) A pharmacy benefits manager operating as a line of business or affiliate of a health insurer, health care center, hospital service corporation, medical service corporation, or fraternal benefit society licensed in this state or of any affiliate of such health insurer, health care center, hospital service corporation, medical service corporation, or fraternal benefit society shall not be required to obtain a license pursuant to this chapter. Such health insurer, health care center, hospital service corporation, medical service corporation, or fraternal benefit society shall notify the Commissioner annually, in writing, on a form provided by the Commissioner, that it is affiliated with or operating a business as a pharmacy benefits manager.

33-64-3.

(a) Every applicant for a pharmacy benefits manager's license shall file with the application and shall thereafter maintain in force a bond in the amount of \$100,000.00 in favor of the Commissioner executed by a corporate surety insurer authorized to transact

insurance in this state. The terms and type of the bond shall be established by rules and regulations.

(b) The bond shall remain in force until the surety is released from liability by the Commissioner or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel the bond upon 30 days' advance notice, in writing, filed with the Commissioner.

(c) Every applicant for a pharmacy benefits manager's license shall obtain and shall thereafter maintain in force errors and omissions coverage or other appropriate liability insurance, written by an insurer authorized to transact insurance in this state, in an amount of at least \$250,000.00.

(d) The coverage required in subsection (c) of this Code section shall remain in force for a term of at least one year and shall contain language that includes that the insurer may cancel the insurance upon 60 days' advance notice filed with the Commissioner. Other terms and conditions relating to the errors and omissions policy may be imposed on the applicant in accordance with rules and regulations.

(e) In the event a licensed pharmacy benefits manager fails to renew, surrenders, or otherwise terminates its license, it must retain both the bond and the errors and omissions coverage for a period of not less than one year after the licensee has failed to renew, surrendered, or otherwise terminated the license.

33-64-4.

No pharmacy benefits manager shall engage in the practice of medicine.

33-64-5.

Pharmacy benefits managers, whether licensed pursuant to this chapter or exempt from licensure pursuant to subsection (1) of Code Section 33-64-2, shall be subject to Code Section 26-4-118, 'The Pharmacy Audit Bill of Rights,' to the same extent and in the same manner as pharmacies.

33-64-6.

A pharmacy benefits manager licensed pursuant to this chapter shall not be required to obtain a license as an administrator pursuant to Article 2 of Chapter 23 of Title 33 to perform any function as a pharmacy benefits manager pursuant to this chapter.

33-64-7.

The Commissioner may not enlarge upon or extend the provisions of this chapter through any act, rule, or regulation."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.